102-18

RESOLUTION TRUST CORPORATION FUNDING ACT OF 1991

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Public Law 102-18
102d Congress

An Act

Mar. 23, 1991
[S. 419]

To amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligations to depositors and others by the least expensive means.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Resolution Trust Corporation Funding Act of 1991.
Banks and banking.
12 USC 1421 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution Trust Corporation Funding Act of 1991".

TITLE I—RTC RESOLUTION PROCESS AND FUNDING

SEC. 101. THRIFT RESOLUTION FUNDING.

Section 21A(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving the left margin of such subparagraphs (as so redesignated) 2 ems to the right;

(2) in the heading, by striking "BORROWING" and inserting "FUNDING";

(3) by inserting after such heading the following new paragraph designation and heading:

"(1) BORROWING.—"; and

(4) by adding at the end the following new paragraph:

"(2) INTERIM FUNDING.—The Secretary of the Treasury shall provide the sum of $30,000,000,000 to the Corporation to carry out the purposes of this section.".

SEC. 102. REPORTS.

(a) IN GENERAL.—Section 21A(k) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)) is amended—

(1) in paragraph (1)(A)—

(A) by striking "The" and inserting "Notwithstanding section 9105 of title 31, United States Code, the"; and

(B) by striking everything after "standards" the first place it appears and inserting ". The audited statements shall be transmitted to the Congress by the Oversight Board not later than 180 days after the end of the Corporation's fiscal year to which those statements apply.";

(2) in paragraph (1)(B), by striking ", or by an independent certified public accountant retained to audit the Corporation's financial statement,"; and

(3) by adding at the end the following:

"(8) OPERATING PLANS.—

"(A) IN GENERAL.—Before the beginning of each calendar quarter, the Oversight Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a detailed financial operating plan covering the remaining quarters of the Corporation's fiscal year in which that quarter occurs.

"(B) CONTENTS.—At a minimum, a detailed financial operating plan shall include—

"(i) estimates of the aggregate assets of institutions that are projected to be resolved in each quarter,

"(ii) the estimated aggregate cost of resolutions in each quarter,

"(iii) the estimated aggregate asset sales and principal collections in each quarter, and

"(iv) the Corporation's summary pro forma financial statement at the end of each quarter.

"(9) REPORTS ON SEVERELY TROUBLED INSTITUTIONS.—The Director of the Office of Thrift Supervision shall deliver on a quarterly basis to the Oversight Board a list of savings associations for which the Director has determined grounds exist, or are likely to exist in the current fiscal year of the Corporation and in the next following fiscal year of the Corporation, for the appointment of a conservator or receiver under the Home Owners' Loan Act. The Oversight Board shall report the aggregate number and assets of such savings associations to Congress within 60 days after the end of each calendar quarter.".

(b) FIRST REQUIRED PLAN.—The first plan described in section 21A(k)(8) of the Federal Home Loan Bank Act, as amended by subsection (a), is due not later than 30 days after the date of enactment of this Act. 12 USC 1441a note.

(c) TIMELINESS OF REPORTS.— 12 USC 1441a note.

(1) IN GENERAL.—At any time when an agency is delinquent in providing information to Congress or any of its committees as required by paragraph (1), (4), (5), (6), (8), or (9) of section 21A(k) of the Federal Home Loan Bank Act or by subsection (b) of this section, the President of the Oversight Board, and the head of any agency responsible for such delinquency shall, within 15 days of such delinquency, in testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives—

(A) explain the causes of such delinquency; and

(B) describe what steps are being taken to correct it and prevent its recurrence.

Testimony shall not be required pursuant to the preceding sentence before either Committee if the Chairman and Ranking Member of such Committee agree that such testimony is not necessary. For purposes of this paragraph, the term "head of an agency" means the Chairman of the Resolution Trust Corporation with respect to reports to be filed by such Corporation, the Director of the Office of Thrift Supervision with respect to reports to be filed by such Office, and the Comptroller General with respect to audits to be conducted by the General Accounting Office.

(2) TRANSITION RULE.—Any information described in paragraph (1) of this subsection that is delinquent on the date of

enactment of this Act shall be provided to the appropriate committees of Congress not later than 30 days following enactment of this Act. Failure to provide such information as required by this paragraph shall be considered as a delinquency under the provisions of paragraph (1).

SEC. 103. STATUS OF EMPLOYEES.

(a) RESOLUTION TRUST CORPORATION.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(q) STATUS OF EMPLOYEES.—

"(1) LIABILITY.—A director, member, officer, or employee of the Corporation or of the Oversight Board has no liability under the Securities Act of 1933 with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

"(2) DEFINITION.—For purposes of this subsection, the term 'employee of the Corporation or of the Oversight Board' includes—

"(A) any employee of the Office of the Comptroller of the Currency or of the Office of Thrift Supervision who serves as a deputy or assistant to a member of the Board of Directors of the Corporation; and

"(B) any officer or employee of the Federal Deposit Insurance Corporation who performs services for the Corporation on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager.

"(3) EFFECT ON OTHER LAW.—This subsection does not affect—

"(A) any other immunities and protections that may be available under applicable law with respect to such transactions, or

"(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.".

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended by adding at the end the following new subsection:

"(f) STATUS OF EMPLOYEES.—

"(1) IN GENERAL.—A director, member, officer, or employee of the Corporation has no liability under the Securities Act of 1933 with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This

subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

"(2) DEFINITION.—For purposes of this subsection, the term 'employee of the Corporation' includes any employee of the Office of the Comptroller of the Currency or of the Office of Thrift Supervision who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

"(3) EFFECT ON OTHER LAW.—This subsection does not affect—

"(A) any other immunities and protections that may be available to such person under applicable law with respect to such transactions, or

"(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.".

SEC. 104. INCIDENTAL POWERS.

(a) RESOLUTION TRUST CORPORATION.—Section 21A(b)(10)(N) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(N)) is amended by adding at the end the following: "The Corporation may indemnify the directors, officers and employees of the Corporation on such terms as the Corporation deems proper against any liability under any civil suit pursuant to any statute or pursuant to common law with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction entered into involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. For purposes of this subparagraph, the terms 'officers' and 'employees' include officers and employees of the Federal Deposit Insurance Corporation or of other agencies who perform services for the Corporation on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager. The indemnification authorized by this subparagraph shall be in addition to and not in lieu of any immunities or other protections that may be available to such person under applicable law, and this provision does not affect any such immunities or other protections.".

(b) OVERSIGHT BOARD.—Section 21A(a)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(5)) is amended—

(1) by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively; and

(2) by inserting after subparagraph (H) the following:

"(I) indemnify, from funds made available to it by the Corporation, the members, officers, and employees of the Oversight Board on such terms as the Oversight Board deems proper against any liability under any civil suit pursuant to any statute or pursuant to common law with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction entered into involving the disposition of assets (or any

interests in any assets or any obligations backed by any assets) by the Corporation, and the indemnification authorized by this provision shall be in addition to and not in lieu of any immunities or other protections that may be available to such person under applicable law, and this provision does not affect any such immunities or other protections;".

SEC. 105. CLARIFICATION OF REVIEW OF PRIOR CASES.

Section 21A(b)(11)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(B)) is amended—

(1) by striking "The Corporation shall exercise" and inserting the following:

"(C) PROVISIONS APPLICABLE TO REVIEW OF PRIOR CASES.—

"(i) IN GENERAL.—The Corporation shall exercise"; and

(2) by adding at the end of subparagraph (C), as so designated by paragraph (1) of this section, the following:

"(ii) ADDITIONAL PROVISIONS.—The Corporation, in modifying, renegotiating, or restructuring the insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, shall carry out its responsibilities under section 519(a) of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (104 Stat. 1386) and shall, consistent with achieving the greatest overall financial savings to the Federal Government, pursue all legal means by which the Corporation can reduce both the direct outlays and the tax benefits associated with such cases, including, but not limited to, restructuring to eliminate tax-free interest payments and renegotiating to capture a larger portion of the tax benefits for the Corporation.".

TITLE II—RTC DISPOSITION OF AFFORDABLE HOUSING

SEC. 201. AMENDMENTS RELATING TO SCOPE OF PROGRAM.

(a) DEFINITION OF CORPORATION.—Section 21A(c)(9)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(9)(C)) is amended by striking the period at the end and inserting ", except that for purposes of subsection (c)(2) only, the term means the Resolution Trust Corporation acting in any capacity.".

(b) SALES TO INSURED DEPOSITORY INSTITUTIONS EXCLUDED FROM PROGRAM.—Section 21A(c)(10) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(10)) is amended to read as follows:

"(10) EXEMPTION FOR CERTAIN TRANSACTIONS WITH INSURED DEPOSITORY INSTITUTIONS.—The provisions of this subsection shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), including any

sale in connection with a transfer of all or substantially all of the assets of a closed savings association (including such property) to an insured depository institution.".

SEC. 202. AMENDMENTS RELATING TO SALE PROCEDURES.

Section 21A(c)(6)(A)(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(6)(A)(i)) is amended to read as follows:

"(i) SALE PRICE.—The Corporation may sell eligible single family property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum purchase price.".

SEC. 203. SCOPE OF APPLICATION.

12 USC 1441a note.

The amendments made by sections 201 and 202 of this Act to section 21A of the Federal Home Loan Bank Act shall be effective only during the period beginning on the date of the enactment of this Act and ending at the end of fiscal year 1991, and section 21A shall apply after the end of such period as if such amendments had not been made.

TITLE III—RTC MANAGEMENT REFORMS

SEC. 301. MANAGEMENT ENHANCEMENT GOALS.

Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(r) MANAGEMENT ENHANCEMENT GOALS.—

"(1) ACTION TO ACHIEVE SPECIFIC GOALS.—The Corporation, upon the enactment of this subsection, shall take action to assure achievement of the management goals specified in this paragraph, as follows:

"(A) MANAGING CONSERVATORSHIPS.—The Corporation shall standardize procedures with respect to its (i) auditing of conservatorships, (ii) ensuring and monitoring of compliance with Corporation policies and procedures by conservatorship managing agents, and (iii) ensuring and monitoring of conservatorship managing agent performance. These procedures shall be developed and implemented not later than September 30, 1991.

"(B) PACE OF RESOLUTIONS.—The Corporation shall take all reasonable and necessary steps to reduce the length of time institutions remain in conservatorship, with the goal that no institution shall be in conservatorship for more than 9 months.

"(C) INFORMATION RESOURCES MANAGEMENT PROGRAM.—The Corporation shall develop and incorporate within its strategic plan for information resources management, (i) a translation of program goals into the communication and computer hardware and software, and staff needed to accomplish such goals, (ii) a systems architecture to ensure that all systems will work together, and (iii) an identification of Corporation information and systems needs at all operational levels.

"(D) SECURITIES PORTFOLIO MANAGEMENT SYSTEM.—The Corporation shall develop within its information architecture framework, a centralized system for the management

of its portfolio of securities. This system shall be developed and implemented not later than September 30, 1991.

"(E) TRACKING REO ASSETS.—The Corporation shall develop, within its information architecture, an effective system to track and inventory real-estate-owned assets. This system shall be developed and implemented not later than September 30, 1991.

"(F) ASSET VALUATION.—The Corporation shall develop a process for the quarterly valuation or updating of valuations of the assets it holds in its capacity as receiver (or as a result of such capacity). Such process shall incorporate, to the extent practical, Corporation disposition experience. In addition, the necessary information systems shall be developed to track and manage these valuations.

"(G) STANDARDIZATION OF DUE DILIGENCE AND MARKET FORMAT.—The Corporation shall develop a program for performing due diligence on one- to four-family mortgages and for marketing such loans on a pooled basis.

"(H) CONTRACTING.—The Corporation, in order to identify the need for any changes in its contracting process which would enhance the independence, integrity, consistency and effectiveness of that process, shall consult on a regular basis with other agencies and organizations that have large scale contracting and procurement systems, and shall review on a regular basis its organizational structure and relationships. The Corporation shall develop and have in widespread use the following:

"(i) A manual setting forth comprehensive policies and procedures.

"(ii) A revised and expanded directive that clearly and definitively describes the roles and responsibilities of all those involved in the contracting process.

"(iii) A revised and expanded directive that sets forth in detail the standard procedures to be followed in evaluating contractor proposals.

"(iv) A set of standardized solicitation and contract documents for use by all Corporation officers.

"(v) A series of standardized contracting training modules for use by Corporation personnel and private contractors.

Reports.

"(2) The Corporation shall, not later than September 30, 1991, file with the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a report on the progress being made toward full compliance by the agency with this subsection, as well as a timetable for completing those items not yet completed.".

TITLE IV—MINORITY CONTRACTING REPORT

SEC. 401. MINORITY AND WOMEN BUSINESS POLICY, OUTREACH AND EQUAL OPPORTUNITY REPORTING REQUIREMENT.

Section 21A(k)(5)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(5)(B)) is amended by adding at the end the following new clause:

"(xiii) A complete description of all actions taken by the Corporation pursuant to subsections (a), (b), and (c) of section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 with respect to the employment of and contracting with minorities, women, and businesses owned or controlled by minorities or women and any other activity of the Corporation pursuant to the outreach program of the Corporation for minorities and women. Such description shall specify the steps taken by the Corporation, in its corporate capacity and its capacity as conservator or receiver, to implement the minority and women outreach programs required by section 1216(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and shall set forth information and data showing—

"(I) the extent to which and means by which contract solicitations have been directed to minorities, women, and businesses owned or controlled by minorities or women by the Corporation and by the Federal Deposit Insurance Corporation on behalf of the Corporation;

"(II) the extent to which prime contracts and subcontracts have been awarded to minorities, women, and businesses owned or controlled by minorities or women, including data with respect to the number of such contracts, the dollar amounts thereof, and the percentage of Corporation contracting activity represented thereby (including contracting activity by the Federal Deposit Insurance Corporation on behalf of the Corporation);

"(III) contracting and outreach activity with respect to joint ventures and other business arrangements in which minorities, women, or businesses owned or controlled by minorities or women have a participation or interest; and

"(IV) the extent to which the Corporation's minority and women contracting outreach programs have been successful in maximizing

opportunities through the outreach policies established by the Corporation for participation of minorities, women, and businesses owned or controlled by minorities or women in the Corporation's contracting activities.".

Approved March 23, 1991.

LEGISLATIVE HISTORY—S. 419 (H.R. 1315):

HOUSE REPORTS: No. 102-27 (Comm. of Conference).
SENATE REPORTS: No. 102-13 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 137 (1991):
Feb. 26, 27, Mar. 5-7, considered and passed Senate.
Mar. 12, H.R. 1315 considered and rejected in House.
Mar. 13, S. 419 considered and passed House, amended.
Mar. 19, Senate agreed to conference report.
Mar. 21, House agreed to conference report.

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